U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

PUBLIC COPY

FILE: [redacted] Office: San Antonio Date: JAN 24 2000

IN RE: Obligor: [redacted]
Bonded Alien: [redacted]

IMMIGRATION BOND: Bond Conditioned for the Delivery of an Alien under § 103 of the Immigration and Nationality Act, 8 U.S.C. 1103

IN BEHALF OF OBLIGOR: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, San Antonio, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record indicates that on November 19, 1998 the obligor posted a $2,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated October 4, 1999 was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of the Immigration and Naturalization Service (the Service) for removal at 10:00 a.m. on November 4, 1999 at [redacted] The obligor failed to present the alien, and the alien failed to appear as required. On November 10, 1999, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that the district director erred in breaching the bond because: (1) he did not send all notices in connection with the bond, (2) he did not comply with the terms and provisions of 8 C.F.R. 103.5a requiring personal service and (3) he did not notify the obligor of the alien's scheduled hearing.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an immigration officer or immigration judge upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by the immigration officer for detention or removal. Matter of Smith, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. 103.6(e).

8 C.F.R. 103.5a(a)(2) provides that personal service may be effected by any of the following:

> (i) Delivery of a copy personally;
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> (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
>
> (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
>
> (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

(Emphasis supplied.) The bond (Form I-352) provides in pertinent part that the obligor "agrees that any notice to him/her in

connection with this bond may be accomplished by mail directed to him/her at the above address." In this case, the Form I-352 listed [redacted] as the obligor's address.

Contained in the record is a certified mail receipt which indicates that the Notice to Deliver Alien was sent to the obligor at [redacted] on October 4, 1999. This notice demanded that the obligor produce the bonded alien for removal on November 4, 1999. The receipt also indicates the obligor received notice to produce the bonded alien on October 7, 1999. Consequently, the record clearly establishes that the district director properly served notice on the obligor in compliance with 8 C.F.R. 103.5a(a)(2)(iv).

Furthermore, it is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce himself to a Service officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by the Service for detention or removal. The bond agreement is silent as to any requirement compelling the Service to notify the obligor of all bond-related matters, despite the obligor's assertion to the contrary. Similarly, neither the statute, the regulations, nor administrative case law provide support for the obligor's allegation that the Service is required to notify the obligor of all bond-related matters.

The obligor claims that the Service is statutorily precluded from declaring the bond breached because the Service's authority to enforce the bonded alien's departure expired six months from the date of the final order of removal as provided under former § 242(c) of the Act, 8 U.S.C. 1252(c).

Section 241(a)(1) of the Act, 8 U.S.C. 1231(a)(1), was added by § 305 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and was effective on April 1, 1997. It superseded former § 242(c) of the Act, 8 U.S.C. 1252(c), and provides, in part:

> (A) When an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").
>
> (B) The removal period begins on the latest of the following:
>
> (i) The date the order of removal becomes administratively final.
>
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
>
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

[redacted]

(C) The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.

The Service record shows that removal proceedings were held in absentia on February 16, 1999 and the alien was ordered removed from the United States to El Salvador. No appeal appears to have been taken from that decision. On October 4, 1999, the district director exercised his authority to determine custody status by directing the obligor to produce the bonded alien for removal on November 4, 1999. However, the obligor failed to present the alien and the alien failed to appear for removal, thus preventing the district director from effecting his removal.

In Bartholomeu v. INS, 487 F. Supp. 315 (D. Md. 1980), the judge stated regarding former § 242(c) of the Act that, although the statute limited the Attorney General's authority to detain an alien after a six-month period (at that time) following the entry of an order of removal, the period has been extended where the delay in effecting removal arose not from any dalliance on the part of the Attorney General but from the alien's own resort to delay or avoid removal. The Attorney General has never had her unhampered and unimpeded period of time in which to effect the alien's timely removal because the alien failed to appear for removal and remains a fugitive.

Present § 241(a)(1)(C) of the Act gives the Attorney General authority to detain an alien for a period of 90 days from the date of final order of removal for the purpose of effecting removal, and was intended to give the Attorney General specific unhampered period of time within which to effect removal. The statute also provides for an extension of the removal period beyond the 90-day period of time and, following Bartholomeu, will be deemed to start running when the alien is apprehended and otherwise available for actual removal.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by the Service for hearings or removal. Such bonds are necessary in order for the Service to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited their or the surety's convenience. Matter of L-, 3 I&N Dec. 862 (C.O. 1950).

After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the district director will not be disturbed.

ORDER: The appeal is dismissed.